

ADVISORY OPINION NO. 92-50

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 3, 1992

GOVERNMENTAL BODY SEEKING OPINION

Chairman of an Association comprised of Public Employees

OPINION SOUGHT

Is it a violation of the Ethics Act for an Association comprised of public employees to solicit sponsorships or advertisements to fund the establishment of an electronic bulletin board system?

FACTS RELIED UPON BY THE COMMISSION

The requestor is the Chairman of an Association which is primarily comprised of a group of county and state public employees. This Association would like to purchase a computer hardware and software system which would be installed in the offices of a State Division. The Association would appoint a committee to oversee the system's operation. The purpose of the project is to implement an electronic bulletin board system (hereinafter referred to as ebbs). The ebbs would facilitate communication between the state and local offices in different regions of the state.

The State Division would use the ebbs for communication with public employees throughout the State. Further, this system would allow a local public employee to ask for an interpretation of a rule and the ruling would be available to all users. This would eliminate the repetition of questions and allow for easy access to all relevant information.

In order to fund this project the Association would like to solicit sponsorships or advertisements from various businesses. Targets for such solicitations would most likely include businesses which are **directly** regulated by its members' governmental agencies and various businesses which manufacture or distribute products or services used by persons regulated by the membership's employing governmental agencies. In this instance, there is no practical difference between a sponsorship and an advertisement.

In return for its purchase, a business will be recognized as a sponsor or advertiser at the beginning of the ebbs and will be allowed to post price and/or technical information regarding specifications of products and services which are available from that company. This information would be available to anyone using the system. Also, the sponsors will be allowed to both ask questions of the public employees and as answer any questions which may arise.

The requestor believes that one important aspect of the ebbs advertising system is that the ad can be updated immediately without additional cost to the sponsor.

All sponsorship and/or advertising revenue would be kept in a separate account to be used specifically for the support, maintenance, expansion and upgrading of the ebbs.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family...No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

- (A) Is doing or seeking to do business of any kind with his or her agency;
- (B) Is engaged in activities which are regulated or controlled by his or her agency; or
- (C) Has financial interests which may be substantially and materially affected...by the performance or nonperformance of his official duties.

West Virginia Code §6B-2-5(h)(1) states in pertinent part that...no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

ADVISORY OPINION

Gifts

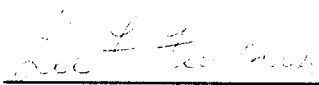
Pursuant to WV Code §6B-2-5(c)(1) a public official or employee may not solicit any gift except for a charitable purpose. Although the Association is not governed by the Ethics Act, the members of the Association are, with only a few exceptions, public officials and public employees. The Commission determined in Advisory Opinion #92-37 that public servants may not contract with private individuals, companies or associations to perform tasks or render services that the Ethics Act prohibits those public servants from performing themselves. Such use of surrogates to perform tasks that the Act otherwise prevents would be improper.

Although sponsors would receive ostensible services in exchange for their payments, the true value of the services received is subject to question. First, the audience for any "ad" would be severely limited, i.e. only to the relatively few people with access to the ebbs. Second, these ebbs users would have very little, if any, use for the information provided in the advertisements. Further, these solicitation targets already have the ability to communicate with these public servants. Under the facts presented, the sale of sponsorships and/or advertisements is not a legitimate purchase but rather the solicitation of a gift.

As noted above, public servants or their surrogates may not solicit any gift except for a charitable purpose. The Commission finds that the Association's plan to establish an ebbs system is not a "charitable purpose" as that term is used in the Ethics Act.

Therefore, it would be a violation of WV Code §6B-2-5(c)(1) for an Association comprised of public employees to solicit sponsorships or advertisements to fund the establishment of an electronic bulletin board system.

The Commission would note that if this is deemed to be a worthwhile project the Association should seek funding from the appropriate State and local governmental agencies. This would allow the governmental entities to establish and operate the EBBS.



Chairman